

ESDRAS K. HARTLEY

IBLA 78-465

Decided November 20, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting oil and gas lease offers for acquired lands. C-26049 (Acq.) and C-26050 (Acq.).

Affirmed.

1. Acquired Lands -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

Lands which were acquired for development of their uranium deposits are not subject to oil and gas leasing under the Mineral Leasing Act for Acquired Lands.

APPEARANCES: Ted J. Gengler, Esq., and Raymond J. Gengler, Esq., attorneys for the appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Esdras K. Hartley appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated May 1, 1978, rejecting noncompetitive oil and gas lease offers C-26049 (Acq.) and C-26050 (Acq.). These offers were rejected because lands acquired for development of mineral deposits are unavailable for oil and gas leasing pursuant to the Mineral Leasing Act for Acquired Lands of 1947 (Act), as amended, 30 U.S.C. §§ 351-359 (1976).

The offers, submitted November 8, 1977, described a total of 1,049.645 acres in T. 44 N., Rs. 18 and 19 W., New Mexico principal meridian. The lands, now under the jurisdiction of the Department of Energy, were acquired in 1946 for uranium development.

Appellant contended on appeal that the lands subject to his offers were not excluded from leasing under the terms of the Act and that the Act's very purpose was promotion of oil and gas leasing on acquired lands. Appellant points out that the Department of Energy, as the managing agency, did not disapprove of oil and gas leasing on these lands. Appellant cites the legislative history of the Act for the proposition that the word "mineral" in the excepting language of the Act should be read restrictively.

The disputed language appears in the introductory phrase of section 352:

Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of 1944, all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States . . . may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. [Emphasis added.]

In other words, oil and gas deposits which are within lands which were acquired for mineral development are not subject to leasing under the Act. As the appellant noted, the report of the House Committee on Public Lands, which recommended passage of the bill, revealed that "helium" was suggested as a replacement for the word "mineral" in the underlined phrase. After quoting the phrase underlined above, the report stated:

At the time of the hearing on the bill, it was suggested that the word "mineral" in the above quotation be stricken and the word "helium" inserted therefor. Representatives of the Department of the Interior and the committee agreed, however, that the word "mineral", in this instance, should apply only to helium, fissionable materials, or any other mineral absolutely essential to the defense of the country, but excluding the minerals specifically mentioned in the bill. In the light of this understanding, the committee decided to retain the foregoing amendment as recommended. [Emphasis added.]

H.R. Rep. No. 550, 80th Cong., 1st Sess. 3, reprinted in [1947] 80 U.S. Code Cong. & Ad. News 1661, 1663.

[1] The express statutory language clearly excepts lands acquired for their mineral deposits. The problem was discussed in Arnold R. Gilbert, A-29123 (Jan. 14, 1963) at 3:

Regardless of the desirability of multiple mineral development on lands acquired for their uranium resources, the question raised by appellants' contentions is whether or not Congress by its enactment of the Mineral Leasing Act for Acquired Lands has authorized this Department to lease such lands. In construing a statute it has often been stated that the words of the statute should be given their plain meaning unless that meaning leads to absurd or futile results. United States v. American Trucking Ass'ns, Inc. et al., 310 U.S. 534 (1940). Of course, if there are any doubts or ambiguities stemming from the statutory language, then recourse may be made to the legislative history and other aids for ascertaining Congress' intent. United States v. Dickerson, 310 U.S. 554 (1940).

Even under appellant's restrictive interpretation of the word "mineral," lands acquired for "fissionable materials," such as uranium, would be excepted from the authorization of the Act. The committee report reveals that Congress was especially concerned with lands bearing fissionable materials. Uranium is within the excepted class; lands acquired for uranium were evidently intended by the committee to be excluded from leasing under the Act. Arnold R. Gilbert, supra.

An application filed under the Act for lands not subject to it is properly rejected. Elgin A. McKenna, 74 I.D. 133, 137 (1967), aff'd, McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1969); Sallie B. Sanford, 23 IBLA 312 (1976). Managing agency consent is irrelevant where the Secretary of the Interior lacks statutory authority to lease the land.

It is submitted that appropriate executive and legislative authorities should at the earliest opportunity re-evaluate the statutes which prevent oil exploration under the circumstances here. We note, however, that if the interests of the United States in oil and gas deposits are endangered, the Secretary may take protective measures in the exercise of his implied authority. Mobil Oil Corp., 10 IBLA 7 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

